

Goh Gok Hoon v Eusuff Bros Sdn Bhd & Ors

HIGH COURT (MALACCA) — CIVIL APPEAL NO 12 OF 1982
WAN YAHYA J
20 JUNE 1989

Landlord and Tenant — Rent-controlled premises — Claim for possession — Subletting — Statutory breach — Control of Rent Act 1966, ss 16(1)(b), 17 & 20

Contract — Terms of contract — Oral contract — Prohibition against subletting — Whether part of oral contract

The appellant, a registered proprietor of a rent-controlled premises, let the premises out to the first respondent on 1 October 1959. There was no written agreement between the parties and the only documentary evidence produced by the appellant are a letter and a copy of the receipts issued to the first respondent. The receipts bore an endorsement prohibiting the first respondent from subletting the premises. Sometime in June 1971, the second and third respondents took over the whole premises from the first respondent. However, the rents were continually paid by the first respondent and the receipts continued to be issued by the appellant in the name of the first respondent. The appellant's application in the present suit for vacant possession is based on the first respondent's breach under s 16(1)(b) and (1)(i) of the Control of Rent Act 1966. The application was dismissed by the learned President and in this appeal, the appellant argued that there is an error of law in the President's decision.

Held, dismissing the appeal:

(1) The restriction on subletting was conveyed to the first respondent only after the tenancy agreement had been concluded and therefore the first respondent had no notice of it at the time when he wrote the letter of acceptance. Hence, the prohibition against subletting did not form a term of the oral contract and consequently the first respondent was not bound by such a restriction.

(2) Failure by the first respondent to supply the appellant with the particulars of the subletting in accordance with s 20 of the Control of Rent Act 1966 constituted an offence for which the first respondent could be punished in accordance with s 20(6). Failure of the first respondent to comply with the section therefore must lead to a breach of the obligation envisaged under s 16(1)(b). This would give rise to the appellant's right to a judgment for repossession.

(3) Once such judgment has been obtained, s 17 of the Act would come into effect and the order could not be enforced (except in specified circumstances) against any subtenants holding the tenancy from the chief tenant. By virtue of s 17(3), a subtenant who remains in possession after he had notice of the judgment or after being served with the order will cease to be a subtenant of the tenant and will himself become a tenant of the landlord subject to all the existing previous covenants. Therefore, the appellant has succeeded in establishing her claim under s 16(1)(b) and obtained possession against the first respondent but she would be precluded from evicting the second and third respondents by the provisions of s 17.

[Editorial Note: The appellant has appealed to the Supreme Court vide Civil Appeal No 02-270-89.]

Legislation referred to
Control of Rent Act 1966 ss 16(1)(b), 17, 20

A *FH De Cruz* (Andrew Goh with him) for the appellant.
GF Nelson for the second respondent.
AK Bashir for the third respondent.

Cur Adv Vult

B **Wan Yahya J:** The facts leading to the issue in this case had been sufficiently narrated in the learned President's ground of judgment. The appellant, a registered proprietor of a rent-controlled premises, let the premises out to the first respondent on 1 October 1959. There was no written agreement between the parties and the only documentary evidence produced by the appellant are a letter, exh P3, and a copy of the receipts issued to the first respondent (P5, P6, P7). The letter P3 reads as follows:

Madam Goh Gok Hoon,
139 Heeren Street,
Malacca

Dear Madam

D House No 12, Wolferstan Road, Malacca

I/We hereby agree to rent the above premises from you as from 1 October 1959 at a monthly rental of dollars one hundred and twenty five (\$125).

Trusting you have no objection.

E Yours faithfully,
Eusuff Bros Limited

Sd:
(SN Syed Hamid)
Director

F The receipts P5, P6 and P7 bore an endorsement to this effect:

No subtenancy or change of tenancy will be allowed or recognized without the written consent of the landlord to that effect.

G Sometime in June 1971 (as disclosed in his affidavit dated 9 May 1979), the third respondent and his son, the second respondent, took over the tenancy of the whole premises from the first respondent. However, the rents were continually paid by the first respondent and the receipts continued to be issued by the appellant in the name of the first respondent.

H According to the appellant, she was only aware of the second and third respondents' presence in the premises sometime in November 1975. She initially took out a suit and obtained an order of vacant possession of the premises from first and second respondents. Subsequently, this order was set aside when the third respondent intervened and was added on as the third defendant.

I The appellant's claim in the present suit for vacant possession is based on the defendant's breach under ss 16(1)(b) and (1)(i) of the Control of Rent Act 1966.

The learned President rejected the documents P5, P6 and P7 as inadmissible as these receipts have different

words written between the three and were therefore not primary evidence within s 62 of the Evidence Act 1950. Counsel for the appellant suggested that there is an error of law which had affected the decision of the President. I do not think so because after that ruling the learned President went on to consider in the alternative the outcome of the case on the assumption that the exhibits were admissible. As a result he concluded that the restriction on subletting was conveyed to the first respondent only after the tenancy agreement had been concluded and therefore the first respondent had no notice of it at the time when he wrote the letter of acceptance. The learned President had arrived at this conclusion drawn not only from documentary evidence but also from oral testimony of witnesses whom he had the advantage of seeing and hearing at the trial. I cannot find anything improper in this finding of fact and neither do I see anything to suggest that the finding was against the weight of the evidence. I therefore agree and accept the fact as found by the learned President that prohibition against subletting did not form a term of the oral contract and consequently the first respondent was not bound by such a restriction. In view of this finding, I do not propose to consider the admissibility of the receipts P3, P4 and P5. The learned President then went on to hold that the second and third respondents became the lawful subtenants when they rented the premises from the first respondent with the appellant continuing to issue receipts in the name of the latter. He accordingly held that the appellant had failed to establish her case to be within s 16(1)(b). On this finding, however, I differ from the learned President.

Legally, the first respondent should have supplied the appellant with the particulars of the subletting in accordance with s 20 of the Control of Rent Act 1966 which reads:

(1) Where a tenant has sublet any part of the controlled premises, the tenant shall within fourteen days after each subletting or in the case of a subletting effected before the date of the coming into force of this Act within three months after that date —

(a) supply the landlord with a statement in writing of the subletting, giving particulars of the occupancy, including the name of the subtenant and the rent charged;

In the present case, he did not do so. In my opinion, failure to comply with s 20(1)(a) constitutes an offence for which the first respondent can be punished in accordance with s 20(6). Now, the provision of s 16(1)(b) on which the appellant's first claim is based authorizes repossession of controlled premises in the following instance:

where any obligation of the tenancy other than the payment of rent (whether under the contract of tenancy or under this Act), so far as the obligation is consistent with this Act, has been broken or not performed by the tenant and the court considers it reasonable that such order or judgment be made or given;

A The mandatory provision of s 20(1)(a) in directing the tenant to supply his landlord with the particulars of his subletting is clearly an obligation on the tenant, arising from and consistent with the Control of Rent Act 1966. The failure of the tenant to comply with that section therefore must lead to a breach of the obligation envisaged under s 16(1)(b) above.

B The first respondent's default in complying with s 20(1)(a) and the consequential breach of his statutory obligation under s 20(1)(a) will give rise to the appellant's right to a judgment for repossession. However, once such judgment has been obtained, s 17 of the Act would come into effect and the order could not be enforced (except in specified circumstances) against any subtenants holding the tenancy from the chief tenant. By virtue of sub-s (3) of s 17, a subtenant who remains in possession after he had notice of the judgment or after being served with the order will cease to be a subtenant of the tenant and will himself become a tenant of the landlord subject to all the existing previous covenants.

C I would therefore hold in this particular case that the appellant had succeeded in establishing her claim under s 16(1)(b) and obtained possession against the first respondent but she would be precluded from evicting the second and third respondents by the provisions of s 17.

D The second issue raised by the appellant in her claim of repossession is based on s 16(1)(i): that the respondent was not personally in occupation of the premises. Although this issue has not been disputed by the first respondent, the outcome of it would have been exactly the same as in the previous ground. Section 17 of the Act would similarly apply and the order could not be enforced on the second and third respondents.

E For the above reasons, which although slightly different from the learned President's ground, had nevertheless led to the same conclusion, I confirm the order made by him and dismiss this appeal. As the first respondent's failure to meet with his tenancy and statutory obligation had led to the institution of this suit, I agree that he alone should be made to pay the costs of this appeal.

F H *Appeal dismissed.*

Solicitors: *TS Goh & Co; GF Nelson & Co; Bashir & Co.*

Reported by *Kevin Mathews*

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